

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No.: 2:07-cr-307-MEF
)	
EARNEST D. BATTLE)	

MOTION FOR LEAVE TO FILE
MOTION TO DISMISS OUT OF TIME

Comes now the Defendant, **Earnest Battle**, through Undersigned Counsel, and requests permission of this Court to file a Motion to Dismiss Out of Time. In support of this Motion, the Defendant would show the following:

1. The deadline for pretrial motions in this case was February 13, 2008.
2. On June 26, 2008, the United States Supreme Court held that the Second Amendment to the United States Constitution guarantees to citizens of the United States the individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. ____ (2008). Mr. Battle now intends to argue that 18 U.S.C. § 922(g)(1) is an unconstitutional infringement upon his right to keep and bear arms.

WHEREFORE, for the reasons set forth above, Mr. Battle moves this Court to grant his Motion.

Dated this 28th day of August, 2008.

Respectfully submitted,

s/ Donnie W. Bethel
DONNIE W. BETHEL
Assistant Federal Defender
201 Monroe Street, Suite 407
Montgomery, Alabama 36104
Phone: (334) 834-2099
Fax: (334) 834-0353
E-mail: don_bethel@fd.org
IN Bar Code: 14773-49

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Jerusha T. Adams, Assistant U. S. Attorney.

Respectfully submitted,

s/ Donnie W. Bethel
DONNIE W. BETHEL
Assistant Federal Defender
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Montgomery, Alabama 36104
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